

REMARKS

Restriction Requirement

The March 30, 2007 Office Action requests election of one of the following groups of claims under 35 U.S.C. 121:

Group I (Claims 1-5 and 9-14) - drawn to a method and a composition for treating a tissue defect in a human or other animal subject.

Group II (Claims 6-8) - drawn to a method of enhancing cell proliferation in a tissue culture of interest.

Traverse

The basis for the restriction requirement is an alleged absence of a novel common technical feature between the claims of Group I and the claims of Group II. In particular, the Examiner alleges that the claims are anticipated by two references cited in the International Search Report: Kipshidze et al. (Lasers in Surgery and Medicine, 2001 28: 355-364) and Nicholson et al. (Clin. Expl. Metastasis, 1991 9(5): 457-468). Applicant respectfully submits that the Examiner's analysis is incorrect, and traverses the restriction requirement.

Neither *Kipshidze* nor *Nicholson* disclose subjecting a tissue culture to an electromagnetic field as required by Claims 1 and 6. Rather, *Kipshidze* discloses exposure of cell cultures to low-power laser radiation. *Nicholson* discloses the irradiation of endothelial cells with gamma-irradiation. Neither of these references discloses nor suggests subjecting cells to an electromagnetic field, created by a Helmholtz coil or similar device, as described in paragraph 17 of the specification. Indeed, the Examiner's analysis confuses electromagnetic radiation, such as laser light or gamma-irradiation, with an electrical field. The processes disclosed in the cited references are significantly different than those claimed by the Applicant. Thus, Claim 1 (of Group I) and Claim 6 (of Group II) contain a novel technical feature -- the use of an electromagnetic field. Applicant submits that the restriction requirement is improper and request that it be withdrawn.

Furthermore, the Examiner has not established why separate searches would be required for both groups of claims. Applicant submits that relevant art might be found in common to both groups and, therefore, all claims should be searched. Applicant submits that such searching would not present an undue burden on the Examiner.

Election

Applicant hereby elects Group I (Claims 1-5 and 9-14).

Election of Species Requirement

The Office Action further requires the election of a single species from each of a) the carriers recited in Claim 12 and b) the growth active materials recited in Claim 14. This requirement appears to be based on the same alleged lack of common inventive concept as forms the basis of the restriction requirement. Applicant accordingly traverses this requirement for the reasons discussed above.

Election of Species


Applicant hereby elects a) collagen from Claim 12 and b) growth factors from Claim 14. Claims reading on the elected species of collagen are Claims 1-5, 9-12 and 14. Claims reading on the elected species of growth factors are Claims 1-5 and 9-14.

Conclusion

Applicant submits that a complete and responsive reply to the restriction requirement and election of species has been made and that all pending claims are patentable. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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